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# PROPERTY ACQUISITION

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**INTRODUCTION** This document was prepared by the City of Wilmington, NC, Purchasing Division to inform citizens of how and why City government acquires property and of the owner’s right to just compensation if property is needed for a public purpose. This document is designed to answer the most frequently asked questions regarding a public agency’s acquisition of private property. It will give you an idea of the processes and policies utilized when property must be acquired for the City of Wilmington. The description of the acquisition process is not intended to be legal advice. You should consult your own attorney if you have any questions about the laws applicable to property acquisition and your legal rights.

**1. What right has any city to acquire my property?** North Carolina municipalities have the right to acquire private property for a public purposed, known as the power of eminent domain. However, the rights of the individual are protected by our Constitution, which guarantees that private property may not be taken by the government except for public use and that just compensation must be paid for the property taken.

**2. Who determines what public projects are necessary?** No public project or improvement is undertaken without an authorization and appropriation by the City Council of the City of Wilmington. Therefore, the final determination as to what public projects are necessary is made by the elected representatives of the people of the City of Wilmington.

**3. How does the Council decide what projects to authorize?** The City Manager recommends projects to the City Council that are necessary and benefit the public. The City department responsible

for the project will usually undertake studies to determine the need for a project. The Council must approve all projects which require acquisition of private property for public use and may require exercise of the power of eminent domain.

**4. Does this mean that the Council decides what particular land will be acquired?** The Council approves the extent of the project in general terms and relies on the expertise of City staff to set the precise location and boundaries of the project and land to be acquired.

The location of some projects, such as a road widening or storm water improvements, are governed by the location of existing facilities. In such projects, engineering and economic considerations are the primary factors influencing precise project boundaries and the determination as to a particular tract of land that will be acquired. Other projects, such as public buildings or parks, allow more flexibility in site location and will usually be approved by the Council based on public input and City staff recommendations.

**5. Why can’t projects be completed within existing street rights-of-way?** There may not be enough land area within the street right-of-way, or between right-of-way boundaries and existing ditches or site improvements to perform the necessary work. Also, there may be utility lines already in place that would interfere with the installation of the new utility line.

**6. Why does the City have to have such a wide easement?** There are many factors that affect the minimum dimensions necessary for each particular project. The City’s Engineering Department uses standard formulas for making the determination of the size of an easement, depending upon the type of project to be done.

**7. What is a temporary easement?** A temporary easement is sometimes required simply in order to provide space adjacent to the permanent easement for people and equipment to be able to move around during the construction process. When construction is complete, the temporary easement area will be returned to its condition immediately prior to the City’s use.

**8. If the City buys my property, how much will it pay me?** Whether the City purchases your property or acquires it using its power of eminent domain, you will be paid fair market value. Fair market value means the price that you could reasonably expect to receive if you sold your property on the open market in a sale between a willing seller and a willing buyer, neither being under any

compulsion to act. It does not mean some special value that your property may have to you or the value that it may have to the City for purposes of the particular public project for which it is needed. In addition to paying the fair market value for your property, the City will pay certain expenses normally incurred in the transfer of title to the City.

**9. How is fair market value determined?** In most cases, the City employs independent appraisers who are familiar with property values. After a thorough examination of valuation factors and a study of market conditions, they prepare appraisals giving their professional opinion of the fair market value of your property on the date it is to be acquired by the City. You or your designated representative will be given an opportunity to accompany the appraiser during his or her inspection. When the appraisers examine your property, you can assist them by answering any questions that they may have and also by pointing out any special features which you feel may add to the value of the property.

**10. What if only part of my property is acquired by the City?** If the City acquires only part of your property, the City will pay you the fair market value of the property taken or the difference in the fair market value of the tract before and after the acquisition, whichever is greater. The value of the property remaining after the acquisition can consider increases or decreases in value resulting from the project.

**11. What happens after an appraisal has been made of my property?** A City Property Acquisition Specialist (PAS) will call upon you to see if you can agree on the terms of a sale. He or she will be familiar with the appraisal of your property and will be prepared to discuss its value in detail. You will be furnished with a written statement of the fair market value of your property and a summary of the basis for just compensation. The PAS will then make an offer to acquire the property for the full amount of the approved appraisal. The PAS will also try to answer any questions that you may have about the purchase of your property. If you and the PAS are able to reach an agreement, it will be reduced to writing and upon approval by the appropriate authority will become a binding agreement. Compensation will be paid to you in accordance with the agreement.

**12. Do I have to accept the price put on my property by the appraiser hired by the City?** No. You are entitled to present your evidence as to the amount you believe is the value of your property and to make suggestions for changing the terms and conditions of

the offer. The City must make reasonable efforts to consider and respond to your evidence and suggestions. If the available evidence justifies your value suggestions, then an adjustment will be made in the offer price.

**13. When will I be required to give up possession of my property?** This depends upon the particular project and the circumstances of each case. The City tries to consider your needs and usually a mutually satisfactory arrangement for transfer of possession can be worked out with the PAS representing the City. You are not obligated to surrender possession of your property until you have been paid the agreed upon purchase price. Furthermore, you will not be required to move from your dwelling or to move your business or farm operation without at least 90 days notice in writing of the date by which your move is required, except in unusual instances when there is an urgent need for your property.

**14. Can I keep any of the buildings or other improvements?** Usually the buildings and improvements will not be required for the project and in such a case you may retain them, if you wish. Of course, you will be required to move them to a location outside of the project area by a specified date and the salvage value of the improvements may be deducted from the purchase price or condemnation award which you receive.

**15. What will the City do if I have growing crops?** Whenever possible, the acquisition of property by the City is scheduled in order to allow for the harvesting by the property owner of growing crops. However, sometimes the property is needed before crops are ready to harvest and in that case, you will receive payment for your crops. You should discuss this with the PAS who contacts you.

**16. When will I be paid?** The City will pay you as soon as possible after you and the PAS have reached an agreement as to price and it has been approved by the City. Of course, payment is subject to the City obtaining clear title to the property or the City's approval as to the condition of title. If the title examination discloses that further proof is necessary to show that you have clear title to the property, you can expedite the payment by assisting the PAS in obtaining such proof.

**17. Will the money I receive for my property be subject to federal taxes?** Responsibility for the administration of federal tax law rests with the Internal Revenue Service. These laws contain provisions with respect to gains derived from the sale of real property, including sales made to the City. Questions concerning the

application of federal tax laws should be taken up with your accountant, attorney, or with the representatives of the Internal Revenue Service.

**18. What happens if I decide not to accept?** When an agreement cannot be reached, it will be necessary for the City to initiate eminent domain proceeding to acquire your property by filing a suit in Superior Court. This is commonly known as a condemnation case.

**19. Is there a public hearing before a condemnation case is filed?** North Carolina law does not require the City to hold a public hearing before a condemnation case is filed. However, there are usually many opportunities for public input before the City initiates a project that may require condemnation.

**20. What happens if a condemnation case is filed?** You will be served with legal documents. Although it is not required, you may wish to be represented by an attorney so that he/she can advise you of your rights, prepare a responsive pleading, which must be filed with the court within one hundred twenty days after you have been served, and represent you in the condemnation proceedings in Superior Court.

**21. How will the City take possession of my property if a condemnation suit is filed?** The date that the City has a right to enter your property to complete the project will depend on the nature of the project.

**22. In condemnation, how do I get paid for my property?** When a condemnation case is filed by the City, money will be deposited with the court to pay for your property. You will have the right to ask that the deposit be released to you. If the deposit is released, you may still ask for additional compensation.

After a final determination of the amount of just compensation, the City will pay the award as soon as possible. If the final award is more than the amount of money that you have withdrawn, you will receive a judgment against the City for the difference, together with interest. If the final award is less than the amount of money you have withdrawn, you will be required to refund the difference.

**23. If I disagree with the court's award, what can I do?** Either the property owner or the City can appeal an award in a condemnation case. The appeal will be heard by the North Carolina Court of Appeals in Raleigh.. However, this is not a new trial, but a

review by the appellate court to determine if there are any legal errors in the proceedings in the trial court.

**24. Is it possible to donate property to the City?** Yes. However, prior to accepting any donation of property, the City will inform the owner in writing of the amount that it believes to be just compensation for the property. The property owner must indicate in writing that although he understands that he cannot be required to sell his property for less than just compensation, he voluntarily agrees to do so.

**25. How do I get detailed information concerning a project that involves acquisition of my property?** Detailed information concerning the project for which your property is to be acquired will be made available by the PAS responsible for the acquisition of your land. You should not hesitate to seek information from the PAS who will be glad to assist you and to answer questions.

**For More Information:**

To help answer additional questions that you may have, call the PAS that has made contact with you at the number below:

**City of Wilmington**

**Real Estate Services**

**Belinda Jarrard, Property Acquisition Specialist**

**910-341-1008**